

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and Programs
Governing Low-Income Assistance Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
ADDRESSING ELIGIBILITY FOR COMPENSATION AWARD
OF UTILITY CONSUMERS' ACTION NETWORK**

Pursuant to Public Utilities Code Sections 1801-1812, Utility Consumers' Action Network (UCAN) filed a Notice of Intent (NOI) to claim compensation for their participation in this proceeding as a member of the newly formed advisory groups for energy efficiency.¹ Subject to the Commission's determination of financial hardship, this ruling finds that UCAN is eligible to file a claim for compensation in this proceeding, or its successor proceeding, for that purpose.

Timeliness

UCAN filed its NOI on March 2, 2005. Public Utilities Code Section 1804(a)(1) says in relevant part that "A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation." The last prehearing conference in this proceeding was held on January 23, 2004 for the purpose of establishing a

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

schedule for high priority issues during 2004. Under the 30-day filing requirement of Section 1804(a)(1), UCAN's NOI would be untimely. However, as discussed below, I believe that the circumstances unique to this NOI invoke the portion of Section 1804(a) that grants the Commission discretion to waive the deadline.

More specifically, the statute provides for exceptions to the 30-day requirement when a party cannot reasonably be expected to identify the issues as to which it will participate, or when new issues emerge subsequent to the filing deadline.² As UCAN explains in its NOI, its participation in this proceeding was prompted by a recent invitation by San Diego Gas & Electric Company (SDG&E) to participate as a member of advisory groups created pursuant to Decision (D.) 05-01-055. That decision, issued on February 3, 2005, establishes a new administrative framework for energy efficiency programs for 2006 and beyond that includes the formation of "program advisory groups" (PAGs) by each of the major energy utilities. In addition, the utilities are required to identify non-financially interested members from each PAG to serve on a subgroup that will, among other things, review the utility's bid selection process for program implementers and compliance filings. These PAG subgroups are referred to as "peer review groups" (PRGs).

Consistent with the treatment of advisory groups on the supply-side, the Commission determined in D.05-01-055 that those parties eligible to receive intervenor compensation awards in this proceeding should be eligible to seek

² Section 1804(a)(1).

compensation for their work as PAG members.³ UCAN notes in its NOI that there has not been a prehearing conference addressing the matter of these advisory groups since the issuance of D.05-01-055. In the meantime, as directed by D.05-01-055, utilities have invited individuals and organizations to sit on their PAGs and PRG subgroups, in order to provide input into the program planning process for the 2006-2008 program cycle. SDG&E invited UCAN to participate in these advisory groups in February. As UCAN explains in its NOI, this prompted UCAN's involvement in the post-2005 program planning process on behalf of SDG&E ratepayers in this proceeding, and the filing of its NOI.

Clearly, UCAN could not have anticipated that it would be invited to participate on the PAGs or PRG subgroups, or even that such groups would be adopted in the final Commission decision. Moreover, UCAN responded in a timely manner once it was able to identify the nature of its participation. UCAN filed its NOI within 30 days of the issuance of D.05-01-055 and within 30 days of being contacted by SDG&E to serve in an advisory capacity, pursuant to that decision. Therefore, given these circumstances, I find that UCAN's NOI is timely filed.

Qualification as Customers

Administrative Law Judge rulings issued pursuant to Public Utilities Code Section 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer, and if so, what type of customer as defined by statute. (D.98-04-059, *mimeo.* p. 31.) Section 1802(b) provides in relevant part that:

³ D.05-01-055, p. 95.

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential ratepayers...”

D.86-05-007 dated May 7, 1986 interpreted this statutory definition and clarified the three customer categories set forth in the statute. As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest, a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization’s articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, *mimeo.*, pp. 29-30, 83, 88.) Finally, an intervenor must show that it will represent customer interests that would otherwise be underrepresented. (D.98-04-059, Finding of Fact 13.)

UCAN is a non-profit consumer advocacy organization with a long history of representing the interests of residential and small commercial customers of California's utility companies before the Commission. UCAN has been found by the Commission to represent a Category 3 customer based on the language of its bylaws. UCAN has approximately 36,000 dues paying members. Because UCAN does not poll its members to determine whether they are joining as residents or as small businesses, UCAN is unable to present a specific percentage of residential membership. However, UCAN states that the overwhelming majority of its membership is comprised of residential ratepayers. I find that UCAN qualifies as a Category 3 customer in this proceeding.

Planned Participation

Public Utilities Code Section 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervenor will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is nonduplicative, and (3) that participation is necessary for a fair determination of the proceeding. The Administrative Law Judge may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

UCAN is filing this NOI for its participation on SDG&E's energy efficiency advisory groups, which were established by D.05-01-055 in this proceeding. UCAN plans to retain consultants to advise UCAN's representatives as well as to help maintain a consistent presence at future PAG and PRG meetings. UCAN's

focus will be on the effectiveness of the programs directed at residential and small business customers.

Based on the nature of UCAN' participation and the stakeholders that it represents, I make the preliminary determination today that: 1) UCAN will be representing customer interests that would otherwise be underrepresented, 2) its participation is nonduplicative, and 3) UCAN's participation is necessary for a fair determination of the issues in this proceeding. However, I emphasize that this determination is preliminary, since the nature of UCAN's participation cannot be fully known at this time. It is incumbent upon UCAN to present information in its request for compensation that will enable the Commission to make a final determination on these matters.

Estimated Compensation Request

As described in its NOI, the amount of UCAN's activity will be fairly limited to attendance at meetings and review of documents. Based on the number of meetings currently scheduled by SDG&E for its PAG and PRG meetings, UCAN estimates the following itemized costs:

Michael Shames, attorney/expert (140 hrs @ \$250 per hour)	\$35,000
Professor Mark Thayer (200 hours @200 per hour)	\$40,000
Two expert presentations at PAG meetings	\$10,000
Incidental expenses	\$ 150

Total Estimated Expenses:	\$85,150
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The NOI fulfills the requirements of Public Utilities Code Section 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling cannot address the merits of UCAN's eventual claim for compensation, I reiterate and clarify my cautionary observations in a ruling dated October 12, 1999 in Application (A.) 99-07-002 et

al. In that ruling, I cautioned intervenors to carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed.

Significant Hardship

Public Utilities Code Section 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, *mimeo.* pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a *group* of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Public Utilities Code Section 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to Section 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, Section 1804(b)(1) creates a rebuttable presumption

that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding.

In a clarification to its NOI, UCAN states that it will renew its finding of financial hardship for 2005 by making a showing of financial hardship in its compensation request in this proceeding.⁴ Therefore, my findings on eligibility are contingent upon the Commission's determination of financial hardship in response to UCAN's request for compensation.

Today's ruling goes only to UCAN's eligibility to claim compensation. It does not address the final merits of any such claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Public Utilities Code Article 5.

Where and When to File Future Request(s) for Compensation

UCAN's NOI for participation in SDG&E's PAG and PRG raises the issue of where and when UCAN should submit its future request(s) for compensation based on that participation. As noted above, the utility advisory group framework was established in this rulemaking, and advisory group meetings for the program year (PY) 2006-2008 program design and funding process are currently underway. As of June 1, 2005, however, when the IOUs submit their PY2006-PY2008 program plans, a new application docket will be open to address them. The PAGs and PRGs will continue to function, however, carrying out advisory tasks related to the compliance phase for PY2006-PY2008 program plans. The compliance phase may also involve a new application docket (or an

⁴ Email correspondence dated March 30, 2005 from Michael Shames, UCAN.

advice letter process), as described in D.05-01-055. Once the Commission reviews and adopts those compliance filings, the PAGs will also meet to review implementation results on at least a quarterly basis. During 2007, the program planning process for PY2009-PY2011 will commence, and the cycle will be repeated.

It would be enormously confusing to UCAN (or other advisory group members) to file their request(s) for compensation in new application dockets that will be opened over time to address specific program planning and funding cycles. Instead, the procedural forum for the Commission's consideration of UCAN's requests for intervenor compensation for its participation in SDG&E's PAG and PRG will be this generic energy efficiency rulemaking, or its successor proceeding.⁵ Should UCAN decide to also participate in energy-efficiency related application dockets (e.g., for the PY2006-PY2008 program plans) in a non-PAG or PRG capacity, then UCAN should file an NOI in the appropriate proceeding in a timely manner. As discussed in D.05-01-055, UCAN's participation on a PAG or PRG does not preclude it from filing comments, testimony or otherwise participating as a party in energy efficiency proceedings.

⁵ This 2001 rulemaking may finally be closed in the coming months with the resolution of major issues related to post-2005 administrative structure and policy rules. A new generic rulemaking on energy efficiency may be opened to take its place. In the event this rulemaking is closed but not followed by another generic rulemaking on energy efficiency, then UCAN shall pursue any claims for intervenor compensation for participation in SDG&E's PAG and PRG in specific individual dockets for program and planning issues.

IT IS RULED that:

1. UCAN timely filed a joint Notice of Intent for compensation in this proceeding.
2. UCAN is a Category 3 customer.
3. UCAN has fulfilled the requirements of Public Utilities Code Section 1804(a)(2)(A).
4. UCAN shall make a showing of significant financial hardship in any request for compensation in this proceeding, or its successor proceeding.
5. Subject to the Commission's determination of financial hardship, UCAN is eligible for an award of compensation for a substantial contribution for its participation in SDG&E's energy efficiency advisory groups. Such an award shall be considered in this proceeding, or its successor proceeding. In the event there is not a generic energy efficiency rulemaking in which to consider UCAN's request for intervenor compensation for its participation in SDG&E's PAG and PRG, UCAN may present its claims in specific individual dockets for program and planning issues.

Dated April 4, 2005, at San Francisco, California.

/s/ MEG GOTTSTEIN by LTC

Meg Gottstein
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have this day served the attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award of Utility Consumers' Action Network on all parties of record in this proceeding or their attorneys of record by electronic mail to those who provided electronic mail addresses, and by U.S. mail to those who did not provide email addresses.

Dated April 4, 2005, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

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